

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DAYSI ACOSTA
Plaintiffs.

vs.

CASE # _____

02-21593

**MAGISTRATE JUDGE
BANDSTRA**

CIV-SEITZ

YEMA HOME HEALTH CARE, INC.
MARIA ESCARPIO
Defendants.

_____/ COMPLAINT.
(OPT-IN PURSUANT TO 29 U.S.C 216(B))

COMES NOW Plaintiff, by and through undersigned counsel, and states:

1. This is an action arising under the Fair Labor Standards Act 29 U.S.C. 201-219.
2. The Plaintiffs was a resident of Dade County, Florida at the time that this dispute arose.
3. The Defendant is a corporation that regularly conducts business in Dade County and regularly transacts business within Dade County. Upon information and belief, the Defendants were the employers for the Plaintiffs for the relevant time period. The Plaintiffs live and reside in Dade County, Fla.
4. All acts or omissions giving rise to this dispute took place in Dade County.
5. The individual Defendant, MARIA ESCARPIO, is president of the Defendant Corporation and maintains operational control over the day to day business activities of the Defendant Corporation.

FEDERAL STATUTORY VIOLATION

6. This action arises under the law of the United States.
7. This Court has jurisdiction pursuant to The Fair Labor Standards Act, 29 U.S.C. SS 201-219 (section #216 for jurisdictional placement) as well as the Florida Constitution that vests this action within a court of competent jurisdiction.
8. 29 U.S.C S 206 (a) (1) states " ..an employer must pay a minimum wage of \$5.15/hr to an employee who is engaged in commerce..." [29 U.S.C. S 206 (a) (1)]"

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9. 29 U.S.C. S 207 (a) (1) states, " if an employer employs an employee for more than forty hours in any work week, the employer must compensate the employee for hours in excess of forty at the rate of at least one and one half times the employee's regular rate.."

10. Defendant's business activities involve those to which the Fair Labor Standards Act applies. The Plaintiff was a nursing assistant while employed by the Defendants. The Defendants are in the commercial nursing home health care business upon information and belief. Both the Defendants' business activities and each Plaintiff's work for the Defendants affected interstate commerce for the relevant time period.

11. Plaintiff has worked an average of (70.0) hours per week for the Defendants from on or about 03/15/00 to on or about 03/15/02. Plaintiff was paid an average of \$7.00/hr. but never received straight time nor overtime wages from the Defendants.

12. The Defendants willfully and intentionally refused to pay each Plaintiff the overtime wages and straight time wages as required by the law of the United States as set forth above and remains owing each Plaintiff these overtime wages since the commencement of each Plaintiff's employment with Defendants as set forth above. DEFENDANTS NEVER POSTED ANY NOTICE, AS REQUIRED BY THE FAIR LABOR STANDARDS ACT AND FEDERAL LAW, TO INFORM EMPLOYEES OF THEIR FEDERAL RIGHTS TO OVERTIME AND MINIMUM WAGE PAYMENTS.

Wherefore, Plaintiff requests double damages and reasonable attorney fees from Defendants, pursuant to the Fair Labor Standards Act as cited above, to be proven at the time of trial for all overtime and minimum wages still owing from each Plaintiff's entire employment period with each Defendant or, as much as allowed by the Fair Labor Standards Act--whichever is greater along with court costs, interest, and any other relief that this Court finds reasonable under the circumstances. The Plaintiffs request a trial by jury.

Respectfully submitted,

**J.H. ZIDELL
ATTORNEY FOR PLAINTIFFS
300 71st STREET #605
MIAMI BEACH, FLORIDA 33141
305 365 6766
FAX 305 365 6766**

BY: 

J.H. ZIDELL

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DAYSI ACOSTA

DEFENDANTS

Yema Home Health Care, Inc.,
MARIA ESCARPIO

MAGISTRATE JUDGE

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

J. H. Zideell, Esq.
300 1st Street, #405
Miami Beach, FL 33141
305.865.6766

ATTORNEYS (IF KNOWN)

(d) CIRCLE COUNTY WHERE ACTION AROSE: DALLAS, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOOSEE HIGHLANDS

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☒ Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State ☐ 1 ☐ 1
Citizen of Another State ☐ 2 ☐ 2
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3
Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Foreign Nation ☐ 6 ☐ 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Recaptured
Transferred from another district (specify) ☐ 5
Multi-district Litigation ☐ 6
Appeal to District Judge from Magistrate Judgment ☐ 7

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT		A TORTS		FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 155 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deposition <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 5410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions A OR B	
A REAL PROPERTY		A CIVIL RIGHTS	PRISONER PETITIONS	A LABOR	B SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395M) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 D/WC/D/WV (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609		

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

29 USC 201.216

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE 5/29/02 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE